



April 2, 2018

By Electronic Submission (<https://foiaonline.regulations.gov>)

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request

Dear FOIA Officer(s):

The Campaign Legal Center (“CLC”) submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*

I. Requested Records

CLC requests **the lease referenced by Kevin S. Minoli in the attached memorandum to Matthew Z. Leopold dated March 30, 2018.**¹ CLC is only requesting the version of the lease that Mr. Minoli would have reviewed.

This request encompasses both digital and physical records.

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

II. Background

On March 29, 2018, *ABC News* reported that, “[f]or much of his first year in Washington, President Trump’s EPA Administrator Scott Pruitt occupied prime real

¹ Memorandum from Kevin S. Minoli to Matthew Z. Leopold (Mar. 30, 2018) (Attached as Exhibit A).

estate in a townhouse near the U.S. Capitol that is co-owned by the wife of a top energy lobbyist, property records from 2017 show.”²

This matter has been the subject of extreme media interest since the initial revelations.³

III. Application for Fee Waiver or Limitation of Fees

A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of government.

FOIA provides that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(iii).

As described above in Part II, the requested materials involve matters of significant public interest. Records likely to be disclosed in response to this request will contribute significantly to the public’s understanding of these revelations regarding Administrator Pruitt. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the government.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the

² John Santucci, Matthew Mosk, & Stephanie Ebbs, *EXCLUSIVE: More Cabinet trouble for Trump? EPA chief lived in condo tied to lobbyist ‘power couple,’* ABC NEWS (Mar. 29, 2018), <http://abcnews.go.com/Politics/exclusive-cabinet-trouble-trump-epa-chief-lived-condo/story?id=54095310>.

³ See, e.g., Jennifer A. Dlouhy & Jennifer Jacobs, *EPA Chief’s \$50-a-Night Rental Raises White House Angst*, BLOOMBERG POLITICS (Mar. 29, 2018), https://www.bloomberg.com/amp/news/articles/2018-03-30/epa-chief-s-50-a-night-rental-said-to-raise-white-house-angst?_twitter_impression=true; Associated Press, *EPA chief paid \$50 a night for Washington condo linked to lobbyist*, NBC NEWS (Mar. 30, 2018), <https://www.nbcnews.com/politics/politics-news/epa-chief-paid-50-night-dc-condo-linked-lobbyist-n861621>; Aaron Blake, *Scott Pruitt’s \$50-per-night condo looks really bad*, WASH. POST (Mar. 31, 2018), https://www.washingtonpost.com/news/the-fix/wp/2018/03/31/scott-pruitts-50-per-night-condo-just-looks-bad/?utm_term=.d01f2785e241; *EPA chief Pruitt under pressure over lobbyist condo deal*, REUTERS (Apr. 2, 2018), <https://mobile.reuters.com/video/2018/04/02/epa-chief-pruitt-under-pressure-over-lob?videoId=414226068&videoChannel=1>.

materials gathered through this FOIA request to develop reports,⁴ write blogs,⁵ and author op-eds.⁶ CLC's research and reports are widely disseminated on its blog,⁷ through its own website,⁸ through social media platforms like Facebook⁹ and Twitter,¹⁰ and regular emails to its supporters, among other communications outlets.¹¹

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹² In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

Requester CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code and this request is made for non-commercial purposes.

As such, we request that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill

⁴ See, e.g., Lawrence M. Noble & Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, Campaign Legal Center (July 26, 2016), <http://www.campaignlegalcenter.org/sites/default/files/Funding%20the%20Presidential%20Nominating%20Conventions%20Report.pdf>.

⁵ See, e.g., Brendan M. Fischer, *How Trump's Plan to Repeal the Johnson Amendment Could Unleash 'Super Dark Money' Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017), <http://www.campaignlegalcenter.org/news/blog/how-trump-s-plan-repeal-johnson-amendment-could-unleash-super-dark-money-our-elections>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <http://www.campaignlegalcenter.org/news/blog/filling-swamp-inauguration-and-transition-funding>;

⁶ See, e.g., Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.

⁷ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

⁸ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

⁹ <https://www.facebook.com/CampaignLegalCenter/>

¹⁰ <https://twitter.com/CampaignLegal>

¹¹ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹² See, e.g., Elizabeth Williamson, *Highflying Mnuchins Take the Country for a Ride*, N.Y. TIMES (Sept. 14, 2017), <https://www.nytimes.com/2017/09/14/opinion/mnuchin-funds-honeymoon.html>; Philip Bump, *Why Ben Carson's appearance in Phoenix was likely a violation of federal law*, WASHINGTON POST (Aug. 23, 2017), https://www.washingtonpost.com/news/politics/wp/2017/08/23/why-ben-carsons-appearance-in-phoenix-was-likely-a-violation-of-federal-law/?utm_term=.175a1f707481; Manu Raju, *Trump's Cabinet Pick Invested in Company, Then Introduced a Bill to Help It*, CNN (Jan. 17, 2017), <http://www.cnn.com/2017/01/16/politics/tom-price-bill-aiding-company/>; Christina Wilkie and Paul Blumenthal, *Trump Just Completely Entangled His Business and the U.S. Government*, HUFF. POST (Jan. 11, 2017), http://www.huffingtonpost.com/entry/trump-business-conflicts-of-interests-treasury_us_5876928de4b092a6cae4ec7b

Congress' intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

B. CLC qualifies for a fee waiver as a “representative of the news media.”

CLC additionally requests that it not be charged search or review fees for this request because the organization meets the definition of a “representative of the news media” for purposes of the FOIA, since CLC “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in Part III(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,¹³ through its own website,¹⁴ through social media platforms and regular emails to its supporters, and through other communications outlets.¹⁵ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work. The D.C. Circuit has held that an requester may qualify as a news media entity if it “‘distribute[s] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly” 799 F.3d. at 1125-26.

Courts have found that other organizations with functionally similar missions and engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See e.g. Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121-25 (D.C. Cir. 2015) (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. V. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester).

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is work as expected, . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed.

¹³ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁴ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹⁵ See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

Sept. 30, 1986), cited in *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact me and advise me of the cost of this request if processing costs exceed \$100.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 28 C.F.R. § 16.5(e)(1)(iv).

As described in Part II, the subject of the request involves a matter of significant public interest.¹⁶

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

* * *

In order to expedite delivery of these requested documents and in order to reduce possible fees incurred, I am requesting that these documents be delivered to me either digitally via email (in PDF format), or on a data disk via the U.S. Postal Service.

Please email copies of responsive documents to:

mchrist@campaignlegalcenter.org

Or, please mail copies of responsive documents to:

**Maggie Christ
Campaign Legal Center
1411 K St NW, Suite 1400
Washington, D.C. 20005**

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

Please confirm receipt of this request and provide me with an estimate of processing time.

Thank you.

Sincerely,

/s/ Maggie Christ

¹⁶ See sources cited *supra* at notes 2, 3.

Maggie Christ
Researcher/Investigator
Campaign Legal Center
mchrist@campaignlegalcenter.org
(202) 868-4799

EXHIBIT A

Memorandum from Kevin S. Minoli to Matthew Z. Leopold (Mar. 30, 2018).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

MAR 30 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Review of Lease Agreement Under the Federal Ethics Regulations Regarding Gifts

FROM: Kevin S. Minoli *ICSS*
Designated Agency Ethics Official &
Principal Deputy General Counsel

TO: Matthew Z. Leopold
General Counsel

As requested, the Ethics Office reviewed the lease agreement entered into by E. Scott Pruitt (TENANT) and Vicki Hart (LANDLORD) under the federal ethics regulations regarding gifts. The regulations issued by the Office of Government Ethics are clear that if a federal employee pays market value for something, it is by definition not a gift under those regulations. 5 C.F.R. 2635.203(b)(10)(excluding from the definition of gift "[a]nything for which market value is paid by the employee"). Market value for rental apartments is commonly thought of in terms of rental cost per month. Under the terms of the lease, if the space was utilized for one 30-day month, then the rental cost would be \$1500, which is a reasonable market value. The lease authorized use by the Administrator and his immediate family, specifically including his spouse and children, and consistent with that provision of the lease his immediate family did stay there when they were in Washington, DC. The lease did not require payment when the property was not utilized. Neither of these two provisions render the rental cost under the lease as something other than market value. Therefore, entering into the lease was consistent with federal ethics regulations regarding gifts, and use of the property in accordance with the lease agreement did not constitute a gift as defined in those regulations.